

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:)
Michael J. Masterson) Group Art Unit: 3643
Serial No.: 10/826,905) Examiner: Ark, Darren W.
Filed: April 15, 2004)
For: APPARATUS AND METHOD FOR)
MONITORING TERMITE ACTIVITY)

SECOND SUPPLEMENTAL DECLARATION FOR REISSUE APPLICATION

I hereby declare that

My residence, mailing address and citizenship are stated below next to my name.

I believe that the inventor(s) named below to be the original and first inventor(s) of the subject matter which is described and claimed in patent number 6,370,811 and for which a reissue patent is sought on the invention entitled APPARATUS AND METHOD FOR MONITORING TERMITE ACTIVITY,

the specification of which was filed on April 15, 2004 as reissue application number 10/826,905, and was amended on April 23, 2008; September 3, 2008; January 13, 2009 and February 10, 2009.

I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above. I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56.

Statement of applicant's belief that original patent is wholly or partly defective

I verily believe the original patent to be wholly or partly inoperative or invalid, for the reasons described below. (Check all boxes that apply.)

- by reason of a defective specification or drawing.
- by reason of the patentee claiming less than he has a right to claim in the patent.
- by reason of other errors.

I seek broadened claims in this reissue application.

Error Relied Upon

An error relied upon as a basis for reissue is that certain claims of U.S. Patent No. 6,370,811 are unnecessarily narrow because they specify a means for controllably exposing a bait or test element to a hazardous environment or organisms, or a flag member movably supported relative to the body of the apparatus and coupled to the test element for movement in projecting relation to the body. At the time of filing the present reissue application, new claims were presented directed to methods and devices not so restricted. Specifics for each of those independent claims are set forth as follows:

New Claim 23 added April 15, 2004 included the step "in response to the displacement, signaling the weakening of the material resulting from its exposure to the subterranean organisms" and did not include the "flag member" limitation as in the original patent claims.

New Claims 30, 38 and 50 added April 15, 2004 each included the limitation "the displacement effectuating an indication of the presence of the organism in the device" and did not include the "flag member" limitation as in the original patent claims. Claims 30 also included the limitation of an opening "dimensioned to permit the organism to fit through the opening" and Claim 38 included the limitation of an opening "dimensioned so that the organism can fit through the opening." Claims 30, 38 and 50 did not include the "means for controllably exposing" limitation as in original patent claims 1, 3, 19.

New Claims 62 and 70 added April 15, 2004 each included the limitation "the displacement effectuating an indication of the presence of the organisms in the device" and did not include the "flag member" limitation as in the original patent claims. Claim 62 also included the limitation "an opening, in the interior wall of the cavity, dimensioned to permit the organism to fit through" and did not include the "means for controllably exposing" limitation as in original patent claims 1, 3, 19. Claim 70 also included the limitation "an opening, in the exterior wall of

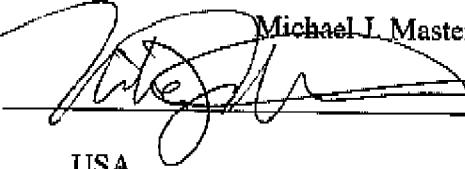
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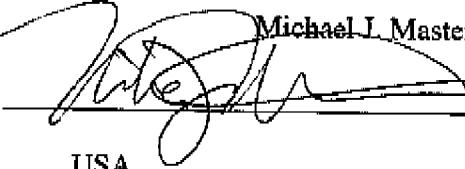
the body, dimensioned to permit the organism to fit through" and did not include the "means for controllably exposing" limitation as in original patent claims 1, 3, 19.

I declare that every error in the patent which was corrected in the present reissue application, and which is not covered by the prior oath(s) and/or declaration(s) submitted in this application, arose without any deceptive intention on the part of the applicant.

I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

SIGNATURE BY THE INVENTOR

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Inventor's signature:  Date: March 12, 2009

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